

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 19-23649-rdd

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5 In the Matter of:

6
7 PURDUE PHARMA L.P.,

8
9 Debtor.

10 - - - - - x

11
12 United States Bankruptcy Court

13 300 Quarropas Street, Room 248

14 White Plains, NY 10601

15
16 February 21, 2020

17 10:01 AM

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21 B E F O R E :

22 HON ROBERT D. DRAIN

23 U.S. BANKRUPTCY JUDGE

24
25 ECRO: SHEA

1 HEARING re Notice of Agenda/ Agenda for February 21, 2020

2 Omnibus Hearing

3
4 Motion of Debtors for Entry of an Order (I) Authorizing the
5 Rejection of Commercial Lease, (II) Authorizing Entry into
6 New Headquarters Lease, (III) Authorizing the Assumption of
7 Commercial Leases, and (IV) Granting Related Relief
8 (ECF 796)

9
10 Notice of Hearing on Debtors Ex Parte Motion for Entry of an
11 Order Shortening Notice with Respect to Debtors Motion for
12 Authorization to Enter into Development Agreement (related
13 document(s) 825, 824, 826)

14
15 Motion to Authorize / Debtors Motion for Authorization to
16 Enter into Development Agreement [Redacted]

17
18 Application to Employ KPMG LLP as Tax Consultants /
19 Application for Order Authorizing Employment and Retention
20 of KPMG LLP as Tax Consultants to the Debtors and the
21 Official Committee of Unsecured Creditors Nunc Pro Tunc to
22 December 23, 2019 filed by Eli J. Vonnegut on behalf of
23 Purdue Pharma L.P. (ECF 815)

24
25 Transcribed by: Sonya Ledanski Hyde

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1 P R O C E E D I N G S

2 THE COURT: Okay, good morning. In re Purdue
3 Pharma, et al.

4 MR. HUEBNER: Good morning, Your Honor. For the
5 record, Marshall Huebner of Davis Polk & Wardwell LLP here
6 on behalf of Purdue and its affiliated debtors.

7 Your Honor, I'm happy to report that we continue
8 to make progress on a variety of important issues, both
9 large and small. Number one I should note, although there
10 will be a lot of things to talk about, we are gratified that
11 this omnibus hearing is uncontested, which, as I told you on
12 the first day of the case, I view as the mark of success of
13 the hearing, which is due to the hard work of many people.

14 Before turning to the agenda, there are three
15 important updates, but I think that the Court, and to the
16 extent that a few parties don't know about them, should
17 have. Number one, the Debtors are delighted to announce
18 that Secretary Tom Vilsack has been retained as the monitor
19 as contemplated under and to ensure and report on compliance
20 with to the Debtor's requested and granted self-injunction.
21 Among many other things, Secretary Vilsack was the United
22 States Secretary of Agriculture for eight years and served
23 as a two-term governor of Iowa.

24 And, Your Honor, I won't repeat it, but I
25 discussed at the last hearing the choice of this candidate

1 in particular reflects the very notable respect for creditor
2 views and input that the Debtors brought to this matter. By
3 the way, actually are beyond what they were required to do
4 under the terms of the injunction itself in terms of
5 consultation rights. So I think everyone is delighted with
6 Secretary Vilsack. This is sort of the formal announcement
7 of the appointment. And we will be issuing a press release
8 later today making it publicly known.

9 THE COURT: Okay.

10 MR. HUEBNER: Number two, Your Honor, I hopefully
11 will end up delighted in retrospect as well to announce that
12 yesterday afternoon the Debtors filed a motion to retain the
13 Honorable Layn Phillips and Kenneth Feinberg to jointly
14 mediate a critical issue to all of us, including the Court,
15 that we've been discussing now for many months including
16 Your Honor, from really the opening days of this case, which
17 is the potential of allocation of value in these cases
18 between on the one hand state and local governments, and on
19 the other hand private claimants.

20 This motion is set for March 2nd. Your Honor was
21 kind enough to give us an extra hearing date yet again in
22 between our omnibuses. And so I will say nothing more about
23 it, because today is not the day for that. And I also don't
24 want to sort of say anything that would risk other people
25 feeling they need to make this a mini set of presentations.

1 It was a tremendous amount of work by many, many parties to
2 get to the framework. And we'll talk about it more on March
3 2nd.

4 THE COURT: Okay.

5 MR. HUEBNER: Number three, Your Honor, where the
6 news is -- I guess maybe I'm going from totally untraveled
7 to still slightly complicated. So it's a little bit more
8 complicated, but still nonetheless positive I hope, is news
9 with respect to the ERF.

10 As Your Honor of course knows, at every hearing I
11 comment and I say I desperately hope that will have the
12 motion on file before the next hearing. There definitely
13 has been progress. So let me tell you where I think we
14 stand. Again, nothing is up for today, but because I know
15 it is an issue of great interest to the Court, as many other
16 parties who are not in the rooms where things are behind
17 hashed out, I thought it was appropriate to quickly tell the
18 Court my belief as to where we are.

19 The parties have been exchanging calls, emails,
20 drafts, markups, for several weeks now, virtually on a daily
21 basis. And I think it's fair to say that the Debtors have
22 tried to serve as cajoler and mediator and facilitator-in-
23 chief. On the one hand, there has been very substantial
24 progress reconciling views on a wide variety of topics. The
25 EFR is an issue, understandably, on which there are

1 incredibly strongly and passionately held views as top the
2 appropriate use of the money, and the vehicles for the
3 money, and the oversight and the like.

4 I believe that at base we have shrunk the list of
5 material open issues from what was actually a very large
6 number as recently as even a few weeks ago to a very small
7 number, whether it's, you know, two or three or four. I
8 don't want to pick a number and then have someone else say
9 it's a different number. But it's certainly not I think a
10 material number of open issues.

11 On the other hand, and unfortunately, despite
12 weeks of extraordinary sustained effort and engagement by
13 many parties, we are not there yet. And as I have said more
14 than once before, the passage of time while this money
15 literally sits in a bank account is really intolerably
16 painful I think to many people, certainly not just to the
17 Debtors.

18 And so next week I think the plan is to have an
19 in-person summit at Davis Polk with sort of the core parties
20 who have been negotiating this and to attempt to kind of
21 metaphorically lock everyone in a room and just hope to god
22 that we get something done before people have to leave.

23 If not, then I'm not exactly sure what the way
24 forward is. It may well be, although I'm not committing to
25 it, that the Debtors actually file a motion and explain sort

1 of where we have gotten and what is left. It may be that a
2 different pathway makes sense. But either way I think,
3 unfortunately, or fortunately, the Debtors are near the end
4 I think of their ability to bridge the gaps. And I think
5 after next week, it will probably be no longer productive
6 for us to try to do it unaided, and we'll probably need a
7 different mechanic of some sort to get us over the line.
8 Quite possibly, frankly, it may involve another court, which
9 would not be unusual.

10 But again, that's not up for today, I just wanted
11 to let the Court know so that I didn't get a question like
12 where the heck is the ERF, like, how can this not be done
13 yet. It is most assuredly not for lack of trying. And
14 that's true of many parties, not only of the Debtors.

15 THE COURT: Okay. The only thing I'll say on that
16 point is -- it's a cliché, but there's a reason why it's a
17 cliché, because it's true. This is money that should be put
18 to good use, because it really is an emergency relief fund.
19 And people shouldn't let the perfect be the enemy of the
20 good.

21 And I will note that if you do bring it to court,
22 I think it would be under Section 363(b), which has a pretty
23 broad standard that I am on record as saying I don't believe
24 under the Second Circuit caselaw of the statute is the same
25 as a corporate business judgement standard. It takes into

1 account the views of the other parties, but it reflects a
2 policy that decisions just need to be made, and hopefully
3 made in the best interest at the time. But the Second
4 Circuit is on record in the Orion Pictures case as saying
5 that the judge isn't perfect, and you just do the best you
6 can.

7 So I would hope that the parties would see fit not
8 to leave it up to me and decide themselves. But I guess if
9 they can't, they won't. But I would hope that they would be
10 able to reach some sort of agreement, recognizing that this
11 is a one-time payment in one sense, but on the other hand,
12 there's a lot of other value that the Debtors will be
13 distributing in the future.

14 MR. HUEBNER: We agree, Your Honor. And again,
15 everyone I think is engaged very intensely and in good
16 faith. It's just that there are just complicated issues
17 that remain ahead of us.

18 THE COURT: Okay.

19 MR. GRAULICH: Your Honor, I think those were the
20 only three off-agenda letter topics I wanted to raise.
21 Obviously there are dozens and dozens of initiatives and
22 work and progress being made, and I think we do try -- these
23 are three more examples of it as far as today's docket which
24 we'll discuss in a few minutes -- to work incredibly hard to
25 build consensus wherever we can to avoid that nature of the

1 Court to resolve things and to keep the case moving along as
2 best we know how.

3 With that, Your Honor, I would propose that we
4 turn to the agenda itself. Mr. Graulich is not through
5 security, and then I think we can turn to Item 1, which is
6 the headquarters base.

7 THE COURT: Okay.

8 MR. GRAULICH: Good morning, Your Honor.

9 THE COURT: Good morning.

10 MR. GRAULICH: For the record, Timothy Graulich of
11 Davis Polk & Wardwell on behalf of the Debtors.

12 Your Honor, the first item on the agenda this
13 morning relates to the Debtor's headquarters. And the
14 motion is at Docket 796. Now, there are no -- we've
15 received no filed objections to the motion, we've received
16 no informal objections to the motion. But we have received
17 a statement from the Creditor's Committee that raises three
18 important issues. And I think because -- and we've
19 responded in writing to those issues in ways that we submit
20 are both sort of comprehensive and compelling as to the
21 responses to those three questions. But just because they
22 are important matters, I would just like to spend a few
23 moments this morning describing the proposed transaction and
24 then walking the Court through our thinking as to why we
25 think this is the transaction that's the best interest of

1 the estate.

2 THE COURT: Okay. I mean, I've reviewed the
3 pleadings and I understand that there is an agreed order,
4 which I've gone through as well. To me it seemed that the
5 choice was simply to use the next several months before the
6 lease expires, and the other leases being interlocked with
7 that effort to find new space at a somewhat lower rent
8 during that period, or do you take the new lease with clear
9 reservations of rights at a slightly higher rent, but for a
10 locked-in period without the transition cost or the risk
11 that you won't find new space.

12 MR. GRAULICH: Yeah. And, Your Honor, just with
13 respect to the new space. So we did a pretty comprehensive
14 effort to try and find alternative space. And it's going to
15 come as no surprise that we're not a prize tenant in the
16 view of many landlords. And so that was not -- and through
17 the help of a broker, that was not such an easy process. In
18 fact, the only -- you know, sometimes you would get halfway
19 through a process and the people would even stop returning
20 your phone calls when they sort of realized who the tenant
21 might be.

22 THE COURT: Well, and also the only -- it looked
23 like the only available leases were for a longer term than
24 anyone wanted.

25 MR. GRAULICH: Correct. A ten-year lease that,

1 frankly, the deposit associated with the ten-year lease was
2 almost the amount equal to the entire rent of this three-
3 year lease. And so that was -- and this is I think the
4 important message that we want to be able to communicate, is
5 that there was some concern by the Committee that this lease
6 somehow reflected our -- you know, imposing our view of the
7 future on the estates and that maybe we were sort of
8 stealing a base and making decisions that would be properly
9 the providence of the reorganized company. And not to
10 belabor the point, but that's not at all what's happened
11 here.

12 The alternatives were either a much longer term
13 lease, which actually would have some consequence on the
14 reorganized company, or to sort of roll the dice and
15 potentially have no lease at the end of this year, which
16 also would have -- which would potentially guide in a very
17 negative way how this company may reorganize.

18 THE COURT: Well, it wouldn't be the end of this
19 year, either. It would be in April, because that's when the
20 statutory period to assume or reject expires.

21 MR. GRAULICH: That's correct, Your Honor. So the
22 why now question is sort of twofold. Why? We have April
23 13th imposed by statute. The evidence submitted from Mr.
24 Lowne is that it would take ten months to sort of go and
25 transition to other space once we have actually found it.

1 But the existing lease, even if we wanted to just say let's
2 let it ride, expires at the end of this year. And so even
3 if we could get an extension, which we tried for and failed
4 to be able to obtain under 364(d)(4), it doesn't get any
5 better. In fact, our sort of microscopic leverage gets
6 worse the longer we're on the clock.

7 THE COURT: Okay. I mean, again, the questions
8 were perfectly legitimate questions to ask, as you ask with
9 any decision that a debtor-in-possession has to make before
10 the business plan has been fully vetted, et cetera. But I
11 think -- I mean, and this appears to me to be a reasonable
12 exercise (indiscernible).

13 MR. GRAULICH: Well, as a judge once told me, do
14 you have anything to add before I rule in your favor. I'm
15 going to take the very strong hint from Your Honor. I'm
16 happy to walk through -- we filed the revised order last
17 night on the docket at Docket 857. I was going to suggest
18 to Your Honor that I could hand it up, but it sounds like
19 you already have it.

20 THE COURT: No, I've been through it.

21 MR. GRAULICH: So unless you have any questions
22 with respect to the revised order --

23 THE COURT: I only had one minor question, which
24 is the Debtors have -- they're taking over space that is
25 currently occupied by one of their subs or affiliated

1 companies.

2 MR. GRAULICH: To be clear, it's actually -- it's
3 a non-debtor parent, but yes.

4 THE COURT: Okay, affiliated company.

5 MR. GRAULICH: Yes.

6 THE COURT: Are they going -- do they know where
7 they're going?

8 MR. GRAULICH: They are -- I don't know the answer
9 to that. My assumption is they're probably going to be
10 someplace else in the building. Because right now we have a
11 somewhat complicated relationship with the space in the
12 sense that we have some leases, and some leases we've turned
13 around -- of the sublessor to third parties, and some were
14 the sublessor to related parties. In other ways with a
15 sublessee from third parties. This all gets cleaned up as
16 of January 1st, 2021, where it would be clear that we just
17 have the single lease. Our parent though is going to, as
18 part of a consensual agreement, going to be moving out of
19 the space in July, and so it will be ready for us to take
20 over in January.

21 THE COURT: Okay. All right. Does anyone have
22 anything further to say on this motion?

23 Okay, I'll grant the motion as revised. I've been
24 through the redline of the proposed order. And as I said,
25 ideally one wouldn't make any significant changes in your

1 rental footprint or your business footprint until a business
2 plan is largely agreed and you're on the way to actually
3 Chapter 11. But clearly that can't happen in a large
4 business with real deadlines. So taking all of the factors
5 into account, this appears to me to be a proper exercise in
6 business judgement.

7 MR. GRAULICH: Thank you, Your Honor.

8 THE COURT: Okay.

9 MR. HUEBNER: Your Honor, that brings us to the
10 next item on the agenda -- apologizes for the 20-second
11 delay -- which is the motion to shorten time with respect to
12 the autoinjector motion. Your Honor, as we set forth in the
13 notion, we actually worked well in advance of what actually
14 would have been the original filing deadline. To the extent
15 that we could with parties, we gave as much notice as we
16 could. We sent people drafts of the motion several days
17 before we filed it. Frankly -- and it was nonetheless I
18 think still filed on 14 days' notice, which is acceptable
19 for many other types of motions. I point that out only to
20 show how hard we really are working on this and all topics
21 where we can to bring people into the tent and not jam
22 anybody.

23 The motion is unopposed, and so I don't think I
24 need to belabor it. We ask that the motion to expedite be
25 granted.

1 THE COURT: Okay. I'll grant the motion. As you
2 all know, when I get motions to shorten notice, I make one
3 of two decisions at that moment. Either it appears to me
4 just a nonstarter to shorten notice, or it may well make
5 sense, but only enough to schedule the hearing on the
6 underlying relief at the same time as the hearing on the
7 motion to shorten notice, and that at least gives parties
8 some additional time to complain about shortened notice.
9 And there are no complaints here, and I think that's
10 consistent with the timetable for running out this
11 initiative and the stages that it contemplate.

12 MR. HUEBNER: Thank you, Your Honor.

13 The second thing I'd like to do, now turning to
14 the motion itself, is move for the admission of the
15 declaration of Mr. John Lowne, who obviously is in the
16 courtroom today. I don't intend to put him on the witness
17 stand. I don't think anyone has questions for him. There
18 are no actual objections.

19 THE COURT: Okay.

20 MR. HUEBNER: But we obviously do as always try to
21 present an appropriate evidentiary record, even if a motion
22 is not opposed.

23 THE COURT: Right. I've reviewed that
24 declaration. Does anyone want to question Mr. Lowne?

25 Okay, so I'll admit it as his direct testimony.

1 MR. HUEBNER: Sure, Your Honor. So let me turn to
2 the two statements and provide a little bit of what I think
3 is important background.

4 So, Your Honor, we were contacted by both the UCC
5 and the ad hoc committee of consenting states, but obviously
6 we've talked to others as well. But in particular there was
7 a fairly robust dialogue which we fully resected and
8 actually welcomed about double-checking that we had ensured
9 that like the conversation you just had about the lease with
10 Mr. Graulich, that we were not actually moving to lock in
11 some huge, weighty thing that reflected a vision of the exit
12 or a post-emergence life of the company to which other
13 creditors have not yet brought in, and which is not the
14 subject, as Your Honor noted, of a business plan and a file
15 of reorganization that we believe has requisite support.

16 The good news is that we've tried to do our jobs
17 well. And as I think parties realize, we had actually
18 already negotiated into the contract all the things that we
19 believe that we needed to ensure that we were actually not
20 locking anything sort of tectonic and level into the case at
21 all. And Your Honor obviously has an unredacted version of
22 the motion. Even the redacted version makes clear that the
23 Debtors have a termination right at any time in their sole
24 discretion on X days' notice for a termination fee of Y
25 dollars. The X days' notice is a quite reasonable and

1 appropriate number of days. And the dollars that we
2 negotiated, we and ultimately others got comfortable with.

3 So I do want to be clear that we are working very
4 hard to walk the difficult tightrope of advancing many
5 things that we believe are necessary and very much in the
6 public good while at the same time fully -- not just
7 slightly -- acknowledging that at the end of the day, you
8 know, a plan of reorganization will need to be supported by
9 a very substantial majority of creditors for end-stage
10 issues and permanent continued work.

11 The dollars to be spent under this contract in
12 2020 in particular compared to the Debtor's \$1.369 billion
13 cash balance announced in yesterday's monthly operating
14 report -- that includes both restricted and unrestricted.
15 And I think unrestricted is maybe \$1.190 billion as opposed
16 to in the monthly operating report. Suffice it to say that
17 it is a relatively modest amount for something that we
18 believe is extremely critical.

19 What the Creditor's Committee and the Ad Hoc
20 Committee of Supporting States asked us for was they said,
21 you know, okay, we're not going to object, we get it. But
22 we want monthly reporting, we want to see what's happening
23 with this product, we want to see what's happening with the
24 spend, et cetera. To which we said of course. Didn't have
25 to ask. I mean, we interact with our sort of key

1 stakeholders and financial advisors pretty much every day
2 anyway, so it was not a big deal at all.

3 We actually added ourselves to their request that
4 we want to meet with you quarterly about all of this.
5 Because in fact a lot of this is ultimately pharmacological
6 and pharmacokinetic and regulatory-based. And it's not just
7 about how many dollars did you spend that an FA looks at and
8 says are you above of, you know, behind budget.

9 The question is more fundamental, which is, does
10 the world still need this product? Is it still racing ahead
11 in a way that we think makes sense? You know, what is the
12 ultimate potential disposition of the product? And
13 obviously the contract also provides for ways that the
14 product and the contract can be transferred to others.
15 Again, keeping optionality open for any number of end-stage
16 possibilities, which is what we did.

17 So if you look at the proposed revised order that
18 we filed late last night, you will see the addition. It's a
19 provision that was easy for us to give that essentially
20 gives information as requested, our suggestion of quarterly
21 meetings, and such other information as I think the parties
22 shall reasonably request, which we were fine with.

23 The Committee filed a statement on the docket
24 which, candidly, we just have no problem at all with. We
25 mostly agree with it. I mean, I'm not going to countersign

1 it, but the fundamental gestalt of the pleading of for the
2 avoidance of doubt because of the exit ramps and because of
3 the continuous reevaluation and because at the end of the
4 day this does not put not only a thumb, but a hand on the
5 scale for really anything about one way or the other. Right
6 now is a relatively low-cost option to develop a potential
7 life-saving drug. But we'll see where we are in March and
8 April and May and June. Totally agree.

9 I mean, as Your Honor I hope noted, no changes to
10 the contract were required or demanded by anyone because
11 they actually saw that we did our job just fine because
12 actually we get it also. And so we're happy to provide that
13 cooperation.

14 I need to apologize to Mr. Troop. He asked me
15 this before the hearing, if the dissenting states could have
16 the same package as well. I just didn't have the time to
17 talk to the clients. We'll talk about that during a brief
18 break and we'll figure it out, but we are sort of find with
19 that.

20 Unfortunately, the pleading of the dissenting
21 states is substantially more complicated. And I think that
22 because it states kind of medical facts and historical facts
23 in it that are highly relevant to the product, I need to
24 spend just a few minutes explaining to the Court our view on
25 some of the things that we just find maybe confusing and

1 very unfortunate would be the best words to use.

2 So number one is they tell us that this is a,
3 quote, speculative product. Speculative use of produced
4 resources I think is that quote. So, Your Honor, I do want
5 to be clear -- and I brought lots of things. I probably
6 won't offer to him most of them up unless the Court wants.
7 But the FDA is actually the regulatory agency charged with
8 deciding when and how products should be pursued. And under
9 Section 506(b) of the Food, Drug, and Cosmetics Act, the FDA
10 only designates a drug as a fast-track product if, and I
11 quote, "It is intended, whether alone or on combination with
12 one or more other drugs for the treatment of a serious or
13 life-threatening disease or condition and it demonstrates
14 the potential to address unmet medical needs for such a
15 disease or condition."

16 So when earlier in 2019 the FDA granted fast-track
17 status to our autoinjector nalmeferene product, that was
18 actually a very big deal, because it's the Agency's view
19 that this should proceed. The FDA also granted competitive
20 generic treatment to our two other nalmeferene initiatives.
21 There is a pre-filled syringe and then there's an actual
22 little glass ampule that you draw from.

23 This doesn't mean we know it's going to work.
24 Obviously it's a product in development. But the question
25 is, is it worth pursuing. And fast-track designation, while

1 I certainly don't want to overstate it, is not irrelevant to
2 the equation of the people whose job it actually is to
3 figure out whether a drug company should be pursuing a
4 medication.

5 Second, they say, and I quote, "Although nalmeffene
6 itself has yet to be determined safe and effective and may
7 not ultimately prove a successful reversal drug." This
8 statement is flatly false. It is patently and flatly false.
9 In 1995 the FDA approved Nalmeffene as a safe and effective
10 product for the specific, among others, of the reversal of
11 opioid overdose. Period. The statement is just false.

12 In 2008, because I'm assuming fentanyl and
13 carfentanil fortunately were not yet on the scene killing
14 people, the company decided that there was no commercial
15 market for their product, and they withdrew. IT was largely
16 used in operating rooms at the time. I think if there was
17 sort of like a little too much opioid, it was used for that.
18 And there just wasn't a market for it.

19 In 2017, because someone asked them, the FDA
20 recertified -- or I'm not sure what the right word is, but
21 issued a formal statement that the withdrawal of the drug
22 from the market was not for safety or efficacy reasons at
23 all and that they stood ready to approve generics and other
24 medications based on the formulation. So the statement that
25 it's not safe and effective is false, and that it may not

1 prove successful as a reversal drug is false. That's just
2 what the FDA tells you. And again, I have it all right
3 here. So if anybody wants to see it and the Court, I'm
4 happy to hand it up.

5 And then they go on to say, to make it worse, at
6 least -- and this is the same sentence. I'm just continuing
7 reading. "At least two other companies in the United States
8 are developing Nalmefene-based treatments, and Nalmefene-
9 based products are already on the market in Europe." I
10 mean, I guess the best you can say is that statement is
11 facially true. But now let's talk about it. And in one of
12 them you sort of have to read the footnote.

13 So there are in fact two companies in the U.S.
14 developing Nalmefene-based treatments. One of them is a 30-
15 day shot that is used for opioid addiction therapy. It has
16 nothing to do with emergency rescue, it has nothing to do
17 with opioid overdose. It is an extended release emergency -
18 - sorry, non-emergency -- an extended release addiction
19 therapy drug.

20 The product in Europe -- first of all, I'm not
21 really sure the relevance in fact that some Nalmefene
22 product is approved in a different country. But what they
23 actually don't tell you is that it's actually a high dose
24 oral pill that you take before ingesting alcohol for alcohol
25 use disorder. It has nothing in the world to do with opioid

1 overdose rescue.

2 So to say kind of, you know, not only is this
3 product totally questionable, but three other companies are
4 working on it. We've now addressed two of those companies.

5 Now let's talk bout the third. So they are right,
6 there is one company in the United States that is actually
7 working on nalmeferene as a potential rescue drug besides
8 Purdue. One other company that we know of. That company is
9 Opiant. So as I said before, the 1995 approval of nalmeferene
10 by the FDA approved it as an injection either
11 intramuscularly or by IV. It did not approve it for any
12 other delivery methodologies. What Opiant is actually
13 working on is a 3 milligram nasal spray, but I'm obviously
14 not going to get into the science. I'm just going to hand
15 you Opiant's 8-K from January 2019 where the FDA told them
16 to stop their study. And they had to issue an 8-K so
17 telling.

18 So we obviously desperately hope that Opiant's
19 product gets back to review under whatever the FDA comment
20 letter is that told them to stop. Because unlike Purdue,
21 which is only working on injectable forms that match the
22 1995 FDA approval for safe and effective and indicated for
23 opioid overdoses, obviously we would love there to be
24 multiple products on the market that have the ability to
25 help save lives, and we hope that the one other product that

1 is currently under development using a new delivery
2 methodology that has never been approved by the FDA that was
3 in the middle of being tested, before that test shuts down,
4 ultimately proves potentially valuable.

5 So, you know, again, we're all here trying to do
6 the best we can to address the terrible opioid crisis. But
7 the notion that injectable nalmefene -- and again, Your
8 Honor, the Lowne Declaration -- and I'm not going to belabor
9 it because it's obviously unopposed and I know Your Honor
10 read everything -- is very clear as to why Nalmefene has the
11 potential to be such an unbelievably critical drug, because
12 the half-life of Narcan, which is the brand name for
13 naloxone, which is the current nasal approved overdose drug,
14 is simply nowhere near long enough to deal with carfentanil
15 or fentanyl or other fentanyl. So what happens is, you
16 know, someone will, god forbid, overdose. And then you
17 insert an opioid antagonist which will reverse their
18 respiratory depression/rest. But if they're still loaded
19 with fentanyl, then the fentanyl extends past the life of
20 the Narcan, and they go right back into respiratory arrest.
21 And if you don't have a second dose of Narcan -- and, you
22 know, how many people have two, let alone one, the fentanyl
23 simply overwhelms the Narcan, and they die. They can get up
24 and walk away and seem fine, and just drop an hour later.

25 So a drug that is way more powerful with an

1 extended half-life -- and the whole point of the
2 autoinjector -- again, to sort of talk about it for a
3 second. You know, many types of delivery systems simply
4 cannot be used by non-trained medical personnel. If I
5 handed most people in this courtroom a syringe and a glass
6 ampule and said please administer this if you see someone
7 overdosing, that's obviously a nonstarter. It's also
8 unlawful. Right? And the same is even true with a pre-
9 filled syringe which has largely in-hospital and ambulance
10 applications, not necessarily sort of regular citizen
11 applications. The autoinjector, like an EpiPen, is
12 literally potentially usable by anybody. You just slam it
13 into the thigh. The short, high-bore needle shoots out. It
14 injects the dose. There's no blood, there's no cleanup,
15 there's no alcohol swabs.

16 And so if it were to be the case -- and Purdue is
17 also working, by the way -- in other words, it's not also
18 right to quote anyone else could do this. In fact, no one
19 else is doing it. Purdue is actually working to radically
20 improve the delivery time and dosage of Nalmefene. That's
21 the magi that people are desperately trying to get to, which
22 is super high dose, immediate acting, long half-life
23 antidote strong enough to overcome fentanyl.

24 So, again, the good news is it's uncontested. But
25 because there were a variety of things stated in here that

1 are just simply not correct, and because they sort of
2 suggest that Purdue is on a frolic that it shouldn't be
3 doing and other people are doing and should be doing
4 instead. And because it's just so wrong on the facts -- and
5 actually if you read their footnotes slowly and carefully,
6 you'll actually kind of see that. Because they actually in
7 fact admit that one of them is the sustained release for the
8 treatment of addiction, which obviously is not what we're
9 working on. We're working on emergency medications for
10 reversal.

11 The last thing, Your Honor, which we just sort of
12 continue to find upsetting and mystifying, candidly, is
13 something that in a pleading that's only three pages long
14 they say sort of two or three times, which is Purdue should
15 not be working on things like this. You know, essentially
16 because it did, in our view, grievous wrong in the past, it
17 should not be allowed to do right in the future. And that's
18 just not a vision we share. And, you know, it's sort of
19 chillingly reminiscent to me of maybe the only time I've
20 ever seen Your Honor just fully and visibly upset, at the
21 injunction hearing, when there were flavors of we'll just
22 wait out the injunction and then come back and get back to
23 sort of the maelstrom that we allege would destroy all the
24 value here.

25 So, Your Honor, here's what I would say. Our

1 vision, which I articulate at almost every hearing, is very
2 simple and very straightforward. To try to look as little
3 as we can into the past and instead to focus on maximizing
4 the value of these companies and dedicating one hundred
5 percent of that value to ameliorating, addressing, bating,
6 and compensating for the opioid crisis. We are working on a
7 medication that we believe has the ability to be incredibly
8 important. And if we learn in April or March or May or June
9 or July that has ceased to be the case, we will shut it down
10 and instead preserve the money for whatever other
11 initiatives we and our creditors think makes sense. But for
12 people to say that inherently we shouldn't be trying to aims
13 towards that north star, which I believe by the way is what
14 is actually required by Title 11, Chapter 11 of the United
15 States Code, which is to Maximize the value of the estate
16 for the parties in interest. You know, that I think is very
17 difficult for us to swallow.

18 So at the end of the day, I apologize. It may
19 seem really strange to bring eight exhibits for an
20 uncontested motion, but the statement was much more than
21 that, candidly. And again, it's to some extent a question
22 of just seriously conflicting visions that keeps coming up.
23 We are trying to save lives and do good, and we know
24 everyone is on that same endeavor. We believe that
25 proceeding with a low-cost option on this product while

1 letting our creditors continually work with us to reassess
2 the propriety of continuing, or pulling quite an expensive
3 ripcord and doing something else instead, is without any
4 question the appropriate way to proceed.

5 THE COURT: Okay. Well, there are no real issues
6 for me to determine today, right?

7 MR. TROOP: Do you want to hear from me, Your
8 Honor?

9 THE COURT: I don't think so. I don't think I
10 need to. I think basically Mr. Huebner was responding to
11 some statements in a pleading that Debtors disagree with.

12 I'll make one note, which is obviously the FDIC --
13 the FDIC...

14 MR. HUEBNER: That's (indiscernible), Your Honor.

15 THE COURT: Yeah, I know. A different agency.
16 The FDA is charged with protecting the public with respect
17 to the development of new drugs. That being said, there
18 have been allegations made that, at least in the past, these
19 Debtors misled the FDA and others about the drugs. Does
20 that mean the FDA is absolved of not doing its job or people
21 relying on the FDA? That's not really what I'm trying to
22 get into.

23 The point I'm trying to say is that one of the
24 reasons I thought it was advisable to have a monitor is that
25 you have someone who literally has no history whatsoever

1 with these debtors, is entirely neutral, and whose judgment
2 is well-respected. And if that person believes that the
3 debtors are going down a path where they're pulling the wool
4 over the FDA's eyes, he should stop it. And people have the
5 ability to reach out to him and say, you know, have you
6 thought of X, Y, or Z as part of that process.

7 So I think, frankly, history does matter here,
8 although the history hasn't really been written on this
9 company. And the whole purpose of this bankruptcy is to
10 leave the history for the future. I hope that didn't sound
11 like Yogi Berra, but it will be written at some point. But
12 in the meantime, as everyone recognizes, the value in this
13 company should be put to good use.

14 And so I think the motion, again, with the close
15 attention paid to it by the key ad hoc committees as well as
16 the Creditor's Committee not only to the motion itself, but
17 to the runout of this program added to it, is a proper
18 exercise of business judgement, both in terms of dollars and
19 cents and the ability to pull the plug if that use doesn't
20 make sense, and also recognizing the unique nature of this
21 business, which is that the Debtors do have the ability,
22 subject to proper review and monitoring, starting with the
23 FDA, but including other -- you know, including a monitor,
24 including parties in the case, to provide value for their
25 constituents that is not just a dollar, but hopefully, or at

1 least one hopes, you know, orders of magnitude on a dollar
2 through the at cost or slightly above cost delivery of drugs
3 that can treat opioid -- either opioid overdoses or
4 addiction.

5 So I think the Committee asked the right
6 questions. The Debtors are asking them also. The Committee
7 laid out three scenarios where this clearly makes sense,
8 recognizing that there may be scenarios where it doesn't
9 make sense. And all things considered, again, focusing on
10 the Second Circuit precedent, the judge can only do what he
11 or she can. You can't determine the future; you can just
12 predict it. But based on the record before me and the
13 status of this case, this makes I think good business sense
14 to pursue.

15 MR. HUEBNER: Thank you, Your Honor. And during
16 that moment I was able to confirm with Mr. Kesselman that we
17 are happy to include the dissenting states as well in the
18 quarterly meetings and provision of information. Again, the
19 goal is to have everybody get ever more comfortable that
20 we're doing only the right things and not things that don't
21 make sense. And I think there's no -- despite the way we
22 got to this hearing, which is not how I would have had it,
23 there's no reason not to proceed as productively as we can
24 once again.

25 Your Honor, that I think brings us to -- Mr.

1 Price, did you want to say anything or not? Okay. Your
2 Honor, I think that's --

3 THE COURT: So you're going to revise the order.

4 MR. HUEBNER: Yeah, we'll revise the order, just
5 add --

6 THE COURT: Often when I combine the hearing on a
7 motion to shorten with the ultimate relief, I just deal with
8 both motions and the one order. So you might want to mark
9 up the order to reflect that.

10 MR. HUEBNER: Oh, okay. I think we had submitted
11 two separate orders already. But if the Court's preference
12 is --

13 THE COURT: Did you -- I didn't see the second
14 one.

15 MR. HUEBNER: We'll merge them, absolutely. So
16 that brings us to the last item on the agenda, which I think
17 is truly, truly uncontested, which is the KPMG retention
18 where he'll also -- we're just working hard to save the
19 estate's money and proceed efficiently and do things that
20 are frankly unusual in terms of sharing advisor and
21 potentially letting others have information. Again, I don't
22 want the fundamental ethos of how we keep trying to proceed
23 on issue after issue, which is very consensus-driven, very
24 speed-driven, very cost-effective driven, and frankly,
25 hopefully very saving-lives-driven to be lost in --

1 THE COURT: And by the way, when you say we, I
2 think you're including not just the Debtors, but the --

3 MR. HUEBNER: Of course.

4 THE COURT: -- official committee and the other
5 committees, too.

6 MR. HUEBNER: Yeah.

7 THE COURT: Okay.

8 MR. HUEBNER: I all but served as the official
9 committee's press agent on their filing. I hope that I did
10 not misdescribe it in any way. And certainly, as I said,
11 when I say we, that's literally what I meant, since in this
12 case it is a joint retention application --

13 THE COURT: Right.

14 MR. HUEBNER: -- with other parties also
15 participating in an agreed form in order to save the estate
16 money. So with that, let me turn the podium over to Mr.
17 Robertson.

18 MR. ROBERTSON: Good morning, Your Honor. For the
19 record, Chris Robison of Davis Polk & Wardwell on behalf of
20 the Purdue debtors.

21 The fourth and final item on today's agenda is the
22 Debtor and the Committee's joint retention of KPMG as tax
23 consultants. This is Docket Number 815.

24 The Debtors and the Committee have determined that
25 they require the services of tax consultants in order to

1 evaluate the tax implications of various potential
2 restructuring alternatives with respect to any disposition
3 of the assets or the stock of company's own or control by
4 shareholders of the Debtors, which is what we call the IACs
5 in connection with these Chapter 11 proceedings.

6 In order to control costs, the Debtor and the
7 Committee propose to jointly retain KPMG for this role. The
8 matter is uncontested. We've received informal comments
9 from the United States Trustee, in response to which we and
10 KPMG and the Committee have agreed to modify Paragraph 7 of
11 the proposed order. That's on Page 4. This is the
12 paragraph modifying the indemnification provisions in the
13 engagement letter.

14 THE COURT: Right.

15 MR. ROBERTSON: And I believe Mr. Masumoto and Mr.
16 Schwartzberg are on the phone as well.

17 THE COURT: That's -- is there a provision beyond
18 the redline that I got, or is that reflecting the comments?

19 MR. ROBERTSON: Your Honor, I don't believe we
20 filed a redline of the proposed order.

21 THE COURT: No, I have a --

22 MR. ROBERTSON: And this is the change to
23 Paragraph 7. It just -- it's literally just conforming the
24 language to the language that the U.S. Trustee's office for
25 Region 2 prefers in this paragraph. There's no other

1 changes.

2 THE COURT: Okay, fine. All right. I mean, I
3 actually was very impressed by the indemnification language
4 in the proposed order. I thought it was beyond what is
5 normally in. So I would hope it -- frankly, I would like to
6 use it as a new template. So I hope that how you changed it
7 doesn't dilute that.

8 MR. ROBERTSON: No, Your Honor. Full disclosure,
9 I believe the language that was in the proposed order is the
10 Delaware standard.

11 THE COURT: Okay, fine. There you go.

12 MR. ROBERTSON: So unless Your Honor has any
13 questions for --

14 THE COURT: I'm sorry. What I want to make sure
15 is that the change you're referring to doesn't dilute what's
16 in...

17 MR. ROBERTSON: No, Your Honor.

18 THE COURT: Okay.

19 MR. ROBERTSON: And again, I'm happy to hand up a
20 blackline just so we're on the same page.

21 THE COURT: All right. Well, I'll just look at it
22 and compare the two. That's fine. I understand the reasons
23 for the changes from the agreement.

24 MR. ROBERTSON: That's the only change, Your
25 Honor. Unless Your Honor has any other questions, we

1 respectfully request that the relief be approved.

2 THE COURT: Okay. Does anyone have anything to
3 say on the application? All right. I'll grant the
4 application. The proposed order appropriately deals with
5 the indemnification and cap on liability, those types of
6 provisions that we routinely modify in retention orders. So
7 you can email the final version of that order to chambers.

8 MR. ROBERTSON: Thank you, Your Honor. And I
9 believe that concludes today's agenda.

10 THE COURT: Okay. Can I say one more thing?
11 Totally different topic than what we've been talking about,
12 but I think it's important. And it's prompted in part by my
13 review of the recent circuit opinion and the briefing for it
14 where I was actually affirmed, but it was troubling,
15 particularly in the briefing.

16 If this case is going to achieve what I think the
17 parties hope it can achieve, the issue of third party
18 releases and exculpations will be front and center. And I
19 appreciate that we're not there yet. But I am concerned
20 that in other cases going to the circuit, parties in
21 interest, including the Federal Government, including the
22 U.S. Attorney, are asserting that the Bankruptcy Court does
23 not have the power to approve a third party release under
24 the caselaw, which says those releases are hard to obtain,
25 but does not have the power to issue a third party release

1 as part of its core jurisdiction in confirming a Chapter 11
2 plan. I think that is a huge error of law and a huge
3 mistake to assert. And you all who represent debtors should
4 be mindful of this. Among other things, I think the caselaw
5 is being miscited, the Second Circuit's own caselaw. And,
6 frankly -- you mentioned Delaware earlier -- the Third
7 Circuit got it entirely right in the Millennium case. We
8 just need to be aware of this.

9 And I would strongly urge -- I don't know if
10 there's anybody here from the U.S. Attorney's office. But
11 before they take this position again, a focus on cases like
12 this where the only way to get true peace, if the parties
13 are prepared to support it and not fight it in a meaningful
14 way, is to have a third party release as part of
15 confirmation of a plan with all of confirmation's
16 protections. And, you know, just be mindful that these
17 issues are bubbling up in other cases, such as the
18 (indiscernible) case that just came down where the U.S.
19 Attorney's office took that position notwithstanding that
20 every release that I'm aware of in the Southern District
21 carves them out.

22 MR. HUEBNER: Your Honor, to give the Court
23 comfort, I think suffice it to say that Davis Polk is
24 actually tracking virtually with an electron microscope all
25 cases that come out of this area. We're not unaware --

1 THE COURT: You may need to do more than track.
2 You may need to file an amicus to counteract some of the --
3 well, I'm just leaving at that, to counteract the --

4 MR. HUEBNER: I don't know if the world wants a
5 Purdue Pharma amicus, but we'll have to take that one under
6 advisement. Maybe we'll leave history to the future.

7 THE COURT: Maybe those firms that routinely
8 practice in this area should realize that the law can really
9 be -- there's a chance at least that the law can be
10 perverted here. I'm not saying the Second Circuit is going
11 to buy the arguments. But if the only people making them
12 are making them on the other side, sometimes it's easy to
13 make a mistake.

14 MR. HUEBNER: Yeah. Understood, Your Honor. And
15 thank you for the guidance.

16 THE COURT: Okay. Thank you.

17 (Whereupon these proceedings were concluded at
18 10:52 AM)

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.

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Landanski Hyde

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Date: February 24, 2020

[& - apologize]

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